

HARBOR MAINTENANCE REVENUE ACT OF 1985

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December 9), 1985

Mr. PACKWOOD, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 1567]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 1567)¹ to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. SUMMARY

HARBOR (PORT) USER CHARGES AND TRUST FUND

*Imposition of port user charges**In general*

The committee amendment imposes a charge on use by a commercial vessel of a harbor or channel ("port") in the United States for the loading or unloading of commercial cargo on or from the vessel. The charge also applies to use by a commercial vessel of any Great Lakes navigation improvement (other than the Saint Law-

¹S. 1567, the Water Resources Development Act of 1985, was reported favorably on August 1, 1985, by the Committee on Environment and Public Works (S. Rep. No. 99-126). The bill was referred to the Committee on Finance for consideration of the revenue aspects of the legislation (sec. 606 and title VIII).

rence Seaway) for loading, unloading, or transporting commercial cargo. The amount of this charge (the "port use charge") is 0.04 percent (four cents per \$100) of the value of the cargo involved, as generally determined by standard commercial documentation. Passenger vessels are also subject to the port use charge, with value generally determined by reference to the prices paid by passengers for their transportation.

In addition, the committee amendment imposes a charge on the use of such ports or Great Lakes navigation improvements by commercial vessels for purposes (other than for loading, unloading, or transportation) such as repair, fueling, or convenience. The amount of this charge (the "port maintenance charge") is \$0.005 (one-half cent) per net registered ton of the vessel. The port use charge and the port maintenance charge are collectively referred to in this report as the "port user charges."

In the case of imported cargo, the port use charge is to be paid by the importer and generally is to be imposed at unloading; for exported cargo, the charge is to be paid by the exporter and generally is to be imposed at loading. In all other cases, the port use charge is to be paid by the shipper and generally is to be imposed at unloading or at such time as prescribed by regulations. The port maintenance charge is to be paid by the vessel owner and is to be imposed at the time prescribed by regulations.

The committee amendment provides that only one port use charge may be imposed with respect to transportation of the same cargo on the same vessel, or with respect to the loading and unloading of the identical cargo at one port. Also, a vessel is not to be subject to the port maintenance charge more than three times in a calendar year.

Applicability of charges

The committee amendment provides that the port user charges do not apply at a port which has not received any Federal funds since 1977, or which was deauthorized by Federal law prior to 1985. (If such a port receives Federal funding at a future date, the port user charges will then become applicable.) No charge is imposed with respect to loading or unloading cargo on or from a vessel if any fuel of that vessel has been or will be subject to the excise tax on fuels used on the inland waterways (sec. 4042). The committee amendment also provides for rebates of tolls paid to the Saint Lawrence Seaway Corporation by commercial vessels for use of the U.S. portion of the Seaway.

Under the committee amendment, the port use charge does not apply on either the loading or subsequent unloading of cargo that is loaded in Hawaii or in any U.S. possession (Puerto Rico, Guam, U.S. Virgin Islands, Northern Marianas, American Samoa, and the Trust Territory of Pacific Islands) and shipped to the U.S. mainland or Alaska for ultimate use or consumption therein. The port use charge also does not apply on either the loading or subsequent unloading of cargo that is loaded at any port in the U.S. mainland or Alaska for transportation to Hawaii or a U.S. possession for ultimate use or consumption therein. The port use charge does apply with respect to the loading or unloading in Hawaii or a possession of cargo shipped to or from a foreign country.

The port use charge does not apply with respect to fish or other aquatic animal life caught by a U.S. vessel, and not previously landed on shore, during a voyage. The port use charge and the port maintenance charge do not apply to the ferrying of passengers (including their vehicles) between points in the United States, or between points between the United States and Canada or Mexico.

Administration of user charges

The port user charges imposed under the committee amendment are to be administered and enforced by the U.S. Customs Service. Except as otherwise provided in Treasury regulations, all administrative and enforcement provisions of customs laws and regulations are to apply with respect to administration and enforcement of the port user charge provisions as if such charges were customs duties. Similarly, for purposes of determining court or agency jurisdiction, the port user charges are to be treated as if they were customs duties. The committee amendment also authorizes the Treasury Department to prescribe any additional regulation needed for administering the new user charges.

Studies

The committee amendment requires the Secretary of the Treasury to study the impact of the port user charge on potential diversions of waterborne cargo from U.S. ports to ports in Canada or Mexico, and to submit a report on the study to the Congress within one year after enactment of the bill. Also, the committee amendment requires the Secretary of State, in consultation with the Secretary of Transportation, to initiate discussions with the Canadian Government within two years after enactment of the bill, with the objective of reducing or eliminating all tolls on the Saint Lawrence Seaway and the international Great Lakes. The Secretary of Transportation is to report to the Congress on the progress of such discussions, and on the economic effect on U.S. waterborne commerce of any proposed reduction or elimination of Seaway tolls.

Harbor Maintenance Trust Fund

The committee amendment establishes a new Harbor Maintenance Trust Fund in the Treasury. The Trust Fund is to receive amounts equivalent to revenues from the port user charges plus revenues (U.S. tolls) from the Saint Lawrence Seaway Development Corporation. As in the case of other recent trust fund legislation, the committee amendment places the Harbor Maintenance Trust Fund statutory provisions in the Trust Fund Code of the Internal Revenue Code.

Under the committee amendment, permitted expenditures out of the Trust Fund are the same as under the bill as reported by the Committee on Environment and Public Works (sec. 607 of the bill). That is, amounts in the Trust Fund are available, as provided by appropriations Acts, for (1) not more than 40 percent of the eligible operations and maintenance costs for commercial navigation of (a) commercial channels and harbors within the United States and (b) Great Lakes navigation improvements operated or maintained by the United States, and (2) 100 percent of the eligible operations and maintenance costs of the Saint Lawrence Seaway (U.S. portion).

Also, Trust Fund amounts are similarly available for making rebates of Seaway tolls pursuant to the committee amendment.

Effective date

These provisions of the committee amendment are effective on April 1, 1986. Thus, the port use charge applies to use of ports in loading or unloading of cargo, or use of Great Lakes navigation improvements, occurring on or after April 1, 1986. Also, the port maintenance charge applies to uses for repairs, etc. occurring on or after April 1, 1986.

INLAND WATERWAYS EXCISE TAX AND TRUST FUND

Waterways fuel tax

The committee amendment provides for an increase in the inland waterways fuel excise tax (Code sec. 4042) from the rate (effective October 1, 1985) of 10 cents per gallon. This rate will increase by one cent per gallon per year, beginning on January 1, 1988, until reaching 20 cents per gallon on January 1, 1997, and thereafter.

The committee amendment adds the Tennessee-Tombigbee Waterway to the list of inland and intracoastal waterways the commercial use of which is subject to the inland waterways fuel excise tax under section 4042. This provision is effective on April 1, 1986.

Waterways trust fund statute

Under the committee amendment, permitted expenditures out of the Inland Waterways Trust Fund are the same as under the bill as reported by the Committee on Environment and Public Works. That is, amounts in the Trust Fund are available, as provided by appropriation Acts, for one-half the costs of construction or rehabilitation of specified navigational lock and dam projects on the inland and intracoastal waterways as authorized in sections 501, 502, and 504(e) of the bill. Trust Fund amounts are not to be used for harbor or harbor components of the waterways.

The committee amendment places the Inland Waterways Trust Fund statute in the Trust Fund Code of the Internal Revenue Code, effective on April 1, 1986. This is consistent with other recent trust fund legislation and with the provisions of the committee amendment establishing the Harbor Maintenance Trust Fund.

AUTHORIZATION OF NON-FEDERAL PORT USER FEES

The committee did not modify section 606 of the bill as reported by the Committee on Environment and Public Works. Section 606 grants Congressional authorization for a non-Federal sponsor (State or local governmental entity) of a harbor construction project to impose and collect user fees in order to recover its share of a project's costs, plus 50 percent of the costs of incremental maintenance at below 45 feet in depth. This provision is effective on the date of enactment.

II. EXPLANATION OF COMMITTEE AMENDMENT

The amendment to S. 1567 by the Committee on Finance provides an amended revenue title (Title VIII) for the bill, relating to the imposition of new harbor (port) user charges, establishment of a new Harbor Maintenance Trust Fund, future increases in the inland waterways fuel excise tax, and certain changes relating to the Inland Waterways Trust Fund and the waterways subject to the inland waterways fuel tax.

A. HARBOR (PORT) USER CHARGES AND TRUST FUND

1. Imposition of port user charges (sec. 802 of the bill and new secs. 4461-4462 of the Internal Revenue Code)

PRESENT LAW

Historically, Federal expenditures for development and operations and maintenance of harbors and ports have been financed from general revenues. Present law does not impose Federal user fees or charges on the beneficiaries of these expenditures.

REASONS FOR CHANGE

The Committee on Finance believes that additional Federal investment is needed for operations and maintenance of U.S. channels and harbors (ports) in order to improve and maintain such ports for waterborne commerce. Such additional investment in U.S. ports will facilitate economic development and make the Nation's water transportation system more efficient. The committee also believes that a portion of Federal expenditures needed for port operations and maintenance should be borne by the direct beneficiaries of such expenditures. Therefore, the committee amendment imposes new port user charges.

Under the committee amendment, a port use charge is imposed on use by commercial vessels of U.S. ports for loading or unloading of commercial cargo, and on use by commercial vessels of any Great Lakes navigation improvement (other than the Saint Lawrence Seaway) for loading, unloading, or transporting commercial cargo. The committee believes that the modest level of the port use charge—four cents per \$100 of cargo value—will not cause competitive or economic burdens on U.S. ports or their users. (Out of caution, however, the committee amendment requires the Secretary of the Treasury to study whether the new port use charge results in diversion of commercial cargo traffic from U.S. ports to ports in Canada or Mexico.) In addition, the committee amendment imposes a port maintenance charge, at a low level on the use of U.S. ports or Great Lakes navigation improvements by commercial vessels for purposes (other than loading, unloading, or transporting commercial cargo), such as repair, fueling, or convenience.

The committee does not intend to reconsider either the nature of the port user charges established in the committee amendment, or the rate of such charges. The committee believes that the ad valorem basis of the charges is the only acceptable basis on which to impose such charges. This national, uniform basis minimizes any

possible competitive disadvantages among cargo types and U.S. ports which otherwise might result from user charges.

Further, the committee believes that the rates established in the committee amendment are at the appropriate level currently and for the foreseeable future. In light of its concern that rate increases could have adverse economic consequences, the committee does not intend to increase the rates of the port user charges above the levels established in the committee amendment. The committee believes that higher rates would unduly increase the cost to consumers to imported goods, disadvantage the competitiveness of American products and commodities in the international marketplace, and likely result in economic disruption of the port industry.

The committee believes that the port use charge generally should not apply on the loading or subsequent unloading of cargo loaded in Hawaii or in U.S. possessions for shipment to the U.S. mainland for use therein, or loaded in the U.S. mainland for shipment to Hawaii or U.S. possessions for use therein, because of the high dependence of these islands' economies on waterborne commerce. However, the committee believes that the port use charge should apply to the use of Hawaii or possession ports with respect to cargo shipped from a foreign country and unloaded in such ports, as well as with respect to cargo shipped from Hawaii or a U.S. possession to a foreign country.

In order to coordinate the imposition of user charges, no charge is imposed with respect to loading or unloading cargo on or from a vessel if any fuel of that vessel has been or will be subject to the inland waterways fuel excise tax. Also, the committee concluded that the port use charge should not apply with respect to fish and other aquatic animal life caught, and not previously landed on shore, during a voyage of a U.S. vessel. The committee notes that no other food source is subject to a Federal charge at the point of harvesting.

The committee determined that U.S. toll charges paid to the Saint Lawrence Seaway Corporation by commercial vessels should be rebated to the person paying such tolls. The committee is concerned that cargo shipped through the Seaway otherwise would bear a double burden of the toll charges and the port use charge. The committee decided to provide a rebate of the Seaway tolls, rather than a toll waiver, in order to avoid affecting the current amount of tolls paid pursuant to bilateral negotiations between the United States and Canada.

The committee believes that, since the new Harbor Maintenance Trust Fund (as indicated below) will provide financing for operations and maintenance costs of the U.S. portion of the Seaway, the goal should be to reduce or eliminate the Seaway tolls. Thus, the committee directs the Secretary of State, in consultation with the Secretary of Transportation, to initiate negotiations within two years with the Canadian Government with the objective of reducing or eliminating all tolls on the Seaway and international Great Lakes.

EXPLANATION OF PROVISIONS

Port user charges

Port use charge.—The committee amendment imposes a charge on any use by a commercial vessel of a port in the United States for the loading or unloading of commercial cargo on or from the vessel, and on any use of a Great Lakes navigation improvement by a commercial vessel for loading, unloading, or transporting commercial cargo. The uniform amount of this charge (the "port use charge") is 0.04 percent (four cents per \$100) of the value of the cargo involved.

Port maintenance charge.—The committee amendment also imposes a charge on any use by a commercial vessel of a U.S. port or a Great Lakes navigation improvement for a purpose other than for loading, unloading, or transporting cargo. That is, the port maintenance charge applies to uses for bunkering (fueling), refitting, repair, convenience, or any similar purpose. The amount of this charge (the "port maintenance charge") is \$0.005 (one-half cent) multiplied by the net registered tonnage of the vessel. The port maintenance charge may not be imposed more than three times in a calendar year on a vessel.

The port use charge and the port maintenance charge are collectively referred to in this report as the "port user charges." The committee amendment places the provisions establishing the new port user charges in the Internal Revenue Code, as in the case of the fuel excise tax imposed on use of the inland or intracoastal waterways.

Applicability of port user charges

Port use subject to charge.—The port use charge applies to loading or unloading commercial cargo on or from a commercial vessel at any channel or harbor (or component thereof) in the United States that is not an inland waterway and that is open to public navigation, and to the use of any Great Lakes navigation improvement by a commercial vessel for loading, unloading, or any other transportation purpose. The port maintenance charge applies to the specified uses of any U.S. port or Great Lakes navigation improvement.

These user charges do not apply at a port for which no Federal funds have been used for construction, maintenance, or operation since 1977. If at any time in the future Federal funds are so used at such a port, the user charges will become applicable with respect to that port. Also, the user charges do not apply at a port that was deauthorized by Federal statute prior to 1985.

The term Great Lakes navigation improvement means any lock, channel, harbor, or navigational facility located in the Great Lakes of the United States or their connecting waterways, other than the Saint Lawrence Seaway or any component of the Seaway. (The Great Lakes connecting waterways include, but are not limited to, the Detroit River, the Saint Clair River, Lake Saint Clair, and the Saint Marys River.) The term port includes the channels of the Columbia River in Oregon and Washington State only up to the downstream side of the Bonneville lock and dam.

Commercial cargo.—The term commercial cargo means any cargo transported on a commercial vessel (including passengers transported for compensation or hire), other than (1) bunker fuel, ship's stores, sea stores, or legitimate equipment necessary for the vessel (i.e., equipment used on or in the vessel for its operation), and (2) fish or other aquatic animal life caught (and not previously landed on shore) on the voyage of a U.S. vessel.

The committee recognizes that fishing vessels use a variety of techniques to preserve and prepare their catch for sale prior to its initial landing. No charge is imposed on the unloading on shore of fish and other seafood for the first time by a U.S. vessel that caught the fish, etc., regardless of the extent to which the fish, etc. has been preserved and processed. However, the port use charge applies (for example) to use of a U.S. port to unload fish that has been shipped from the initial landing port, or to unload fish not caught on a U.S. vessel.

Commercial vessel.—The term commercial vessel means any vessel used (1) in transporting cargo by water for compensation or hire, or (2) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel. The term commercial vessel does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and a contiguous country (Canada or Mexico). The term ferry means any vessel that arrives at a location in the United States on a regular schedule of at least once each day.

Value.—For purposes of the port use charge, value means the value of the cargo as determined by standard commercial documentation, except as otherwise provided in Treasury regulations. In the case of the transportation of passengers for hire, value means the actual charge paid for such service, or the prevailing charge for comparable service if no actual charge is paid.

In the case of loading or unloading cargo at a port (or Great Lakes navigation improvement), the port use charge applies to the value of the cargo that is loaded or unloaded, not to the value of other cargo on the vessel that is neither loaded nor unloaded. In the case of any transportation use of a Great Lakes navigation improvement other than for loading or unloading, the port use charge applies to the value of the cargo carried on the vessel. The port maintenance use charge applies to the net registered tonnage of the vessel, not to cargo value.

Rule relating to ports in Hawaii and U.S. possessions.—The committee amendment provides that the port use charge does not apply to the loading or subsequent unloading of cargo that is loaded on vessels at ports in Hawaii or in the possessions of the United States (Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, Northern Marianas, and the Trust Territory of the Pacific Islands) for shipment to the U.S. mainland (the conterminous United States and Alaska) for use or consumption therein. In addition, the port use charge does not apply with respect to the loading or subsequent unloading of cargo that is loaded at a U.S. mainland port on a vessel for transportation to Hawaii or any U.S. possession for ultimate use or consumption in Hawaii or the possession. The

inapplicability of the port use charge in these circumstances does not affect the possible applicability of the port maintenance charge.

The port use charge applies with respect to cargo shipped between a foreign country and Hawaii or a U.S. possession, on the loading or unloading of the cargo in Hawaii or the U.S. possession. Also, the port use charge applies to the loading of cargo at a U.S. mainland port that is shipped through Hawaii but that is destined for a foreign country. Thus, for example, the port use charge applies to the loading in San Francisco of waterborne cargo shipped from San Francisco through Hawaii for ultimate use or consumption in a foreign country.

Coordination of port use charge and inland waterways tax.—No charge is imposed with respect to the loading or unloading of cargo on or from a vessel if any fuel of that vessel has been or will be subject to the inland waterways fuel excise tax (under Code sec. 4042). For example, a barge transporting cargo down the Mississippi River from Minneapolis to New Orleans is subject to the inland waterways fuel excise tax on part of the voyage. Therefore, the cargo carried on the barge will not be subject to the port use charge upon unloading at New Orleans. However, if that cargo is then loaded (for example) onto a deep-draft, oceangoing vessel, the port use charge applies to the use of the port for loading, since fuel used by the oceangoing vessel is not subject to the inland waterways tax. Similarly, the unloading of imported cargo arriving in New Orleans on such an oceangoing vessel for transportation on a barge up the Mississippi is subject to the port use charge.

Rebate for Saint Lawrence Seaway tolls paid.—The committee amendment provides a rebate, to the person incurring the toll, of any Saint Lawrence Seaway toll paid to the Saint Lawrence Seaway Development Corporation for use of the U.S. portion of the Seaway. Under the committee amendment, the rebate is to be paid from the Harbor Maintenance Trust Fund, which is to receive the revenues from the U.S. tolls.

Exemption.—The port use charge does not apply to the United States Government or any agency or instrumentality thereof.

Payment of port user charges

The port use charge is to be paid by the importer in the case of cargo entering the U.S., by the exporter in the case of cargo to be exported from the U.S., and by the shipper in the case of any other waterborne cargo (i.e., cargo loaded or unloaded at U.S. ports involving shipment between U.S. ports) or in the case of transportation of passengers. The tonnage-based port maintenance use charge is to be paid by the owner of the vessel, at such time as prescribed by Treasury regulations.

In the case of foreign-bound cargo, the charge is to be imposed at the time of loading of the cargo. In all other situations involving loading or unloading, the charge is to be imposed at the time of unloading of the cargo. Where the port use charge applies to use of a Great Lakes navigation improvement other than for loading or unloading, the charge is to be imposed at such time as prescribed by Treasury regulations.

Only one port use charge is to be imposed with respect to the transportation of the same cargo on the same vessel. Also, the port

use charge is to be imposed only once where the same cargo is loaded and reloaded at the same port.

EFFECTIVE DATE

These provisions are effective on April 1, 1986.

2. Customs administration of port user charges (sec. 802 of the bill and new Code sec. 4462)

PRESENT LAW

There are currently no Federal fees or charges assessed on port use in the United States. There is, however, a substantial body of law relating to the importation of merchandise and the collection of customs duties. The Tariff Act of 1930, as amended (codified in volume 19 of the U.S. Code) and the Customs Regulations of the United States (volume 19 of the *Code of Federal Regulations*) set out detailed rules and procedures for the classification and appraisal of imported merchandise and for the administration and enforcement of customs laws.

REASONS FOR CHANGE

Since the U.S. Customs Service currently has a strong presence at ports of entry and is experienced at appraising imported merchandise, the Committee on Finance concluded that it would be appropriate for the Customs Service, rather than the Internal Revenue Service, to collect, administer, and enforce the port user charges provided for in Title VIII of the bill.

EXPLANATION OF PROVISION

In order to facilitate administration and collection of the port user charges by the U.S. Customs Service, the committee amendment provides that all administrative and enforcement provisions of U.S. customs statutes and Treasury regulations thereunder are to apply with regard to the port user charges imposed by the committee amendment as if such charges were customs duties. For this purpose, the committee amendment provides that any penalty expressed in terms relative to the amount of a duty (charge) is to be treated as not less than the amount that bears a similar relationship to the value of the cargo. Since the customs laws and regulations are to apply, the committee amendment specifies that the administrative provisions of the Internal Revenue Code are inapplicable to the collection and administration of the port user charges.

The committee amendment provides that for purposes of determining the jurisdiction of U.S. courts and agencies, the port user charges are to be treated as customs duties. Thus, the Court of International Trade is to have primary jurisdiction for actions involving the port user charge provisions.

The committee amendment expressly authorizes the Treasury Department to prescribe such additional regulations as may be necessary to carry out the collection, administration, enforcement, and purposes of the provisions relating to the port user charges, including regulations providing for the manner and method of payment

and collection of any charge, additional enforcement mechanisms (including investigations), the posting of bonds to secure payment of any charge, exemptions from the user charges based on administrative considerations, remittance or mitigation of penalties, and settlement or compromise of claims.

EFFECTIVE DATE

These provisions are effective on April 1, 1986.

3. Harbor Maintenance Trust Fund (sec. 803 of the bill and new sec. 9505 of the Code)

PRESENT LAW

There is currently no special fund or trust fund relating to Federal financing of the operations and maintenance of U.S. ports. Such Federal expenditures have been financed from general fund appropriations.

Currently, the provisions of four trust funds receiving tax revenues earmarked for specific Federal expenditure purposes are set forth within the Trust Fund Code of the Internal Revenue Code (Chapter 98): the Black Lung Disability Trust Fund (sec. 9501); the Airport and Airway Trust Fund (sec. 9502); the Highway Trust Fund (sec. 9503); and the Aquatic Resources Trust Fund (sec. 9504). The Inland Waterways Trust Fund is also added to the Trust Fund Code by the committee amendment.

The funds in the Trust Fund Code are managed by the Secretary of the Treasury. The Secretary is required to submit annual reports to the Congress on the financial status of each trust fund for the preceding fiscal year, including a projection of its status during the next five fiscal years (sec. 9602). Amounts appropriated from earmarked revenues to a trust fund are to be transferred to the trust fund on at least a monthly estimated basis, with subsequent proper adjustments to be made if necessary (sec. 9601). Any fund balances not needed for current expenditure are invested in U.S. interest-bearing obligations (sec. 9602(b)).

REASONS FOR CHANGE

The Committee on Finance concluded that revenues from the new port user charges should go into a new Harbor Maintenance Trust Fund in the Treasury. Amounts in the Trust Fund are to be available for certain operations and maintenance costs of Federally financed port projects (including such costs for the U.S. portions of the Saint Lawrence Seaway), as set forth in section 607 of the bill as reported by the Committee on Environment and Public Works, and for rebates of Seaway tolls as authorized in the committee amendment. Also, the committee amendment places the Trust Fund statute in the Trust Fund Code of the Internal Revenue Code, consistently with recently enacted trust fund legislation.

EXPLANATION OF PROVISIONS

Establishment of trust fund; transfer of revenues to the trust fund

The committee amendment establishes a new trust fund in the Treasury, the Harbor Maintenance Trust Fund (the "Harbor Trust Fund"). Under the committee amendment, the statutory provisions for this trust fund are placed in the Trust Fund Code of the Internal Revenue Code.

The committee amendment appropriates to the Harbor Trust Fund amounts equivalent to revenues from the new port user charges (new Code sec. 4461). In addition, the Harbor Trust Fund is to receive amounts equivalent to tolls transferred from the Saint Lawrence Seaway Development Corporation (i.e., U.S. Seaway tolls) and interest earned on trust fund investments (sec. 9602(b)).

Management of trust fund

Under the general provisions of the Trust Fund Code (sec. 9601), amounts appropriated to the Harbor Trust Fund are to be transferred at least monthly on the basis of estimates by the Secretary of the Treasury. Adjustments in estimated amounts so transferred are to be made by the Secretary.

The Secretary of the Treasury (under Code sec. 9602) is to manage the trust fund. The Secretary is to report to the Congress each year on the financial condition and results of the trust fund operations during the preceding fiscal year, and on the projected status and operations during the next five fiscal years.

Any trust fund monies not necessary to meet current withdrawals are to be invested in interest-bearing obligations of the United States. Interest earned on such investments is to be credited to the Trust Fund (sec. 9602(b)).

Expenditures from trust fund

Amounts in the Harbor Trust Fund are to be available, as provided by appropriation Acts, for making expenditures for purposes described in section 607 of the bill, as in effect on the date of enactment. As set forth in the bill as reported by the Committee on Environment and Public Works, expenditures may be made from the Trust Fund under section 607 for—

(1) Not more than 40 percent of the eligible operations and maintenance costs assigned to commercial navigation of (a) all commercial channels and harbors within the United States, and (b) all Great Lakes navigation improvements operated or maintained by the Secretary of the Army; and

(2) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation.

In addition, Trust Fund amounts may be expended (as provided by appropriation Acts) for rebates of Saint Lawrence Seaway Development Corporation tolls to be made, pursuant to the committee amendment, to persons paying such tolls.

For purposes of the above trust fund expenditures, the term commercial channel or harbor has the meaning given such term by section 608(1) of this bill; the term eligible operations and maintenance has the meaning given such term by section 608(3) of the

bill; and the term Great Lakes navigation improvement has the meaning given such term by section 608(4) of the bill.

EFFECTIVE DATE

The trust fund provisions are effective on April 1, 1986.

4. Treasury study of potential diversion of waterborne cargo to ports in Canada or Mexico (sec. 807 of the bill)

The committee amendment directs the Secretary of the Treasury, in consultation with the U.S. Customs Service and other appropriate Federal agencies, to study the impact of the port use charge imposed by the bill on potential diversions of waterborne cargo from U.S. ports to ports in Canada or Mexico.

The Secretary is to provide a written report to the Congress, submitted to the Senate Committee on Finance and the House Committee on Ways and Means, within one year from the date of enactment of this bill.

B. INLAND WATERWAYS EXCISE TAX AND TRUST FUND

PRESENT LAW AND BACKGROUND

In general, Federal expenditures for construction and operations and maintenance costs of U.S. waterways have been financed from general revenues, rather than charges or taxes imposed on navigation users. However, in the Inland Waterways Revenue Act of 1978 (P.L. 95-502), the Congress imposed a fuel excise tax on commercial users of specified inland and intracoastal waterways, and provided for transfer of these revenues to an Inland Waterways Trust Fund.

Under present law, amounts in the Trust Fund are available, as provided by authorization and appropriation Acts, for making construction and rehabilitation expenditures for navigation on the specified waterways the commercial use of which is subject to the fuel excise tax. Amounts transferred to this Trust Fund have not been appropriated from the Trust Fund, which had an estimated balance of \$192 million at the end of fiscal year 1985.

The fuel tax is imposed on diesel and other liquid fuels used by commercial cargo vessels on 26 designated inland or intracoastal waterways of the United States (Code sec. 4042). The specified waterways include the Mississippi River upstream from Baton Rouge, Louisiana, the Mississippi River tributaries, Columbia-Snake Rivers Inland Waterways, and the Gulf and Atlantic Intracoastal Waterways. The tax does not apply to fuel used by deep-draft oceangoing vessels, recreational vessels, passenger vessels, or fishing boats.

The present tax rate of 10 cents per gallon was increased from 8 cents per gallon on October 1, 1985, under the rate schedule enacted in 1978.

REASONS FOR CHANGE

The Committee on Finance believes that the inland waterways fuel excise tax should be increased to provide additional sharing of the costs of inland waterways navigational improvements from commercial users of the system. However, the committee is con-

cerned that the increased fuel tax payments not be an undue immediate burden on the users. Therefore, the committee decided to increase the tax rate gradually over a 10-year period, beginning on January 1, 1988. The committee emphasizes that this schedule of future fuel tax rate increases is not intended to be increased further.

The committee believes that the Tennessee-Tombigbee Waterway should be added to the list of inland waterways the commercial use of which is subject to the inland waterways fuel tax. This waterway, which opened to commercial traffic in 1985, was not operational when the existing 26 specified waterways were included in the enactment of the Inland Waterways Revenue Act of 1978.

In addition, the committee determined that the provisions for the Inland Waterways Trust Fund should be part of the Trust Fund Code of the Internal Revenue Code. This action is consistent with the placing of other trust funds in the Trust Fund Code in recent years.

EXPLANATION OF PROVISIONS

1. Increase in waterways fuel tax rate (sec. 804 of the bill and sec. 4042(b) of the Code)

The committee amendment provides for a future, gradual increase in the waterways fuel excise tax of one cent per year over a 10-year period, beginning on January 1, 1988. Thus, the tax rate will be 11 cents per gallon beginning January 1, 1988 and will increase by one cent per year until the tax reaches 20 cents per gallon on January 1, 1997 and thereafter.

2. Inland waterways subject to fuel tax (sec. 805(c) of the bill and sec. 206 of the Inland Waterways Revenue Act of 1978)

The committee amendment adds the Tennessee-Tombigbee Waterway (from its confluence with the Tennessee River to the Warrior River at Demopolis, Alabama) to the list of specified inland and intracoastal waterways the commercial use of which is subject to the inland waterways fuel excise tax.

3. Inland Waterways Trust Fund (sec. 805 of the bill and new sec. 9506 of the Code)

Under the committee amendment, amounts in the Inland Waterways Trust Fund are available, as provided by appropriation Acts, to the Secretary of the Army to be expended for construction, rehabilitation, modification, and post-authorization planning of specified navigation lock and dam projects (or any component thereof) on U.S. inland and intracoastal waterways as authorized pursuant to sections 501, 502, and 504(e) of the bill, as in effect on the date of enactment. These provisions authorize the Trust Fund to finance one-half of the construction costs of six inland waterway navigation lock and dam projects.¹ These expenditure purposes were specified

¹ These projects are: Oliver Lock replacement, Alabama; Gallipolis Lock and Dam replacement, Ohio and West Virginia; Bonneville Navigation Lock, Oregon and Washington; Lock and Dam 7 and Lock and Dam 8 replacements, the Monongahela River, Pennsylvania; and a second lock at Locks and Dam 26 on the Mississippi River, Illinois and Missouri.

in the bill as reported by the Committee on Environment and Public Works. The Trust Fund is not to be used for expenses for operation, maintenance, construction, rehabilitation, modification, or post-authorization planning of any harbor or harbor components of the inland and intracoastal waterways.

The committee amendment places the statutory provisions of the Inland Waterways Trust Fund in the Trust Fund Code of the Internal Revenue Code (Chapter 98).²

EFFECTIVE DATE

These provisions are effective on April 1, 1986.

C. CONGRESSIONAL AUTHORIZATION OF NON-FEDERAL PORT USER FEES (SEC. 606 OF THE BILL)

The Committee on Finance approved without amendment, section 606 of the bill as reported by the Committee on Environment and Public Works. Section 606 authorizes the non-Federal sponsor (State or local governmental entity) of a harbor (port) construction project to impose and collect user fees in order to recover its share of a project's costs, plus 50 percent of the incremental costs of maintaining harbors below 45 feet in depth. This provision is effective on enactment.

The committee believes that the ability of a local sponsor to implement a system of user fees is an important alternative financing mechanism. The committee emphasizes that nothing in this section requires or otherwise mandates such user fees. The whole cost, or any portion thereof, of providing the local (i.e., non-Federal) share of a project's cost may be carried as a general expense of the local government, or financed by any other means available to the local sponsor.

Determination of the nature of the fees, the fee structure and schedule, and the frequency of fee collection is left to the discretion of the appropriate non-Federal sponsors, except that the fees are to be established only after an appropriate public hearing is held, and the fees are required to reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel.

Several exemptions from the local fees authorized under this section are provided. Such local fees are not to be imposed on (1) non-commercial vessels owned or operated by the United States or any of its political subdivisions; (2) any noncommercial vessel owned or operated by any other nation; (3) any noncommercial vessel used by a State, or its political subdivisions in the business of such State or subdivision; (4) vessels engaged in dredging activities or involved strictly in intraport movement; or (5) vessels with design draft of 14 feet or less, if the harbor improvement for which the fee is assessed is deeper than 20 feet.

² The Inland Waterways Trust Fund under the committee amendment is to be treated for all purposes of law as a continuation of the existing Inland Waterways Trust Fund as established by section 203 of the Inland Waterways Revenue Act of 1978.

III. BUDGET EFFECTS AND VOTE OF THE COMMITTEE AMENDMENT

A. BUDGET EFFECTS

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the effect on the budget of the committee amendment to S. 1567 (Title VIII).

The committee amendment is estimated to increase net fiscal year budget receipts (after income tax offsets) by \$61 million in 1986, \$143 million in 1987, \$159 million in 1988, \$177 million in 1989, and \$196 million in 1990. The total increase in net fiscal year budget receipts is \$363 million for 1986-1988, and \$736 million for 1986-1990. The following table shows the estimated gross user charge receipts under the committee amendment, as well as the net budget receipts, for fiscal years 1986-1990.

(In millions of dollars)

	Fiscal years				
	1986	1987	1988	1989	1990
Gross receipts from port user charges (to Harbor Maintenance Trust Fund).....	81	190	208	226	246
Increased Inland Waterways Trust Fund excise tax receipts.....	(¹)	1	4	10	15
Gross increase in budget receipts.....	81	191	212	236	261
Net increase in budget receipts (after income tax offsets).....	61	143	159	177	196

¹ Less than \$500,000.

B. VOTE OF THE COMMITTEE

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote of the Committee on Finance on the motion to report the committee amendment to S. 1567. The committee amendment was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE COMMITTEE AMENDMENT AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee on Finance makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the committee amendment to S. 1567, as reported.

Numbers of individuals and businesses who would be regulated

The committee amendment imposes new port user charges on the use of U.S. ports of Great Lakes navigational improvements by commercial vessels, and provides for collection and enforcement of the charges by the U.S. Customs Service. Accordingly, use of U.S. ports by shippers or other persons for loading or unloading commercial cargo, or other specified purposes, will become subject to the user charges imposed under the committee amendment.

Economic impact of regulation on individuals, consumers, and business

The committee amendment provides for a new port use charge on the loading or unloading of commercial cargo at a U.S. port or on use by a commercial vessel of Great Lakes navigation improvements. This new charge is set at a sufficiently low level (0.04 percent of cargo value) so as not to impair either U.S. ports or U.S. port users. The committee amendment also imposes a new port maintenance charge (\$0.005 per registered ton) on commercial vessels using U.S. ports as repair, fueling, or convenience. The increase in costs to the port users and to ultimate consumers of commercial cargo is expected to be insignificant in comparison to the overall prices of the cargo, and hence is expected to result in little, if any, additional increase in consumer prices.

Impact on personal privacy

The committee amendment generally does not relate to the personal privacy of individuals.

Determination of the amount of paperwork

Under the committee amendment, shippers of commercial cargo or other persons with respect to which the new port user charges apply generally will be required to provide standard commercial documentation to establish cargo value and otherwise to comply with administrative provisions relating to the new charges.

B. OTHER MATTERS

Consultation with Congressional Budget Office on budget estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the budget estimates of the Committee on Finance relating to the revenue provisions of the committee amendment (as shown in Part III of this report) and agrees with the Committee's budget estimates. The Director submitted the following statement.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 16, 1985.

Hon. BOB PACKWOOD,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: CBO has examined an amendment, the Harbor Maintenance Revenue Act of 1985, in the nature of a substitute to Title VIII of S. 1567, the Water Resources Development Act of 1985, as ordered reported by the Committee on Finance on December 11, 1985.

The amendment to the bill would amend chapter 36 of the Internal Revenue Code of 1954 relating to certain other excise taxes by imposing a new ad valorem charge of 0.04 percent on the value of commercial cargo loaded or unloaded from a vessel at a United States port. The amendment would exempt from the charge shipments to Hawaii and possessions of the United States, fuel supplies, ships' stores, equipment necessary to the operation of the

vessel, fish or other aquatic animal life caught in voyage, cargo in any port or channel that does not receive federal funds for construction, maintenance, or operation of that port, cargo if any portion of its transportation has or will be subject to the Inland Waterways Tax on fuel, and cargo purchased or sold by the United States. The amendment would also impose a new "bunkering" charge on any vessel using a U.S. commercial channel or harbor, such as for making repairs, refitting, or simply for convenience. A charge equal to \$0.005 per net registered ton would be assessed on each vessel not more than three times in any calendar year. The money collected from the ad valorem and bunkering charges would be deposited into the newly established Harbor Maintenance Trust Fund.

The amendment would also amend the Internal Revenue Code of 1954 by including the Inland Waterways Trust Fund as section 9506, and by adding the Tennessee-Tombigbee Waterway to the tax base of the Inland Waterways Tax on fuel. These amendments to S. 1567 would become effective April 1, 1986. In addition, the amendment would increase relative to current law the tax on diesel and other liquid fuels from 10 cents to 20 cents a gallon over a 10-year period beginning January 1, 1988. Revenues from the tax would be deposited into the Inland Waterways Trust Fund and would be used to finance 50 percent of the construction costs of inland waterway lock and dam projects.

CBO has reviewed and concurs with the estimates of the revenue effects prepared by the Joint Committee on Taxation, shown in the table below.

Estimated net revenue effects of the amendment to S. 1567

Fiscal years:	Millions
1986	\$61
1987	143
1988	159
1989	177
1990	196

If you have any questions, please feel free to call me or you may wish to have your staff contact Neil Fisher of the Tax Analysis Division (X6-2680).

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

New budget authority

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the Committee on Finance states that the changes made to existing law by the committee amendment involve no new budget authority.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the Committee on Finance

states that the changes made to existing law by the committee amendment will involve no new or increased tax expenditures.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary, in order to expedite the business of the Senate to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the provisions of S. 1567, as reported by the Committee).

